

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

CHICAGO MERCANTILE EXCHANGE,  
INC., and BOARD OF TRADE OF THE  
CITY OF CHICAGO, INC.,

Plaintiffs / Counterclaim Defendants,

v.

TECHNOLOGY RESEARCH GROUP, LLC,

Defendant / Counterclaim Plaintiff,

v.

CME GROUP, INC.

Counterclaim Defendant.

Case No. 1:09-cv-3895

Judge Ruben Castillo

**TECHNOLOGY RESEARCH GROUP LLC'S  
STATEMENT REGARDING TRIFURCATION**

Pursuant to the minute order entered by this Court on April 18, 2011, TRG provides the following statement regarding the time necessary for trial and its witnesses at trial.

If this Court grants the CME's Motion for Trifurcation, TRG anticipates that: (a) the liability phase of the trial would require approximately 5 trial days, (b) the damages phase of the trial would require 2 trial days, and (c) the equitable defense phase would require 1 to 2 trial days. TRG believes that if the liability and damages issues were tried together, those phases would likely require 6 trial days total. TRG expects that separating those phases will require the repetition of certain evidence in the damages phase from the liability phase to provide the jury with context for damages arguments.

TRG has not made final decisions about what witnesses will be called live as opposed to having their deposition testimony played at trial. The following chart provides TRG's best estimate of the phases of the trial to which the most likely witnesses' testimony will relate:

| Witness          | Liability Only | Damages Only | Both Phases |
|------------------|----------------|--------------|-------------|
| Howard Garber    |                |              | X           |
| Patrick Gambaro  | X              |              |             |
| Russell Mangum   |                | X            |             |
| James Farrell    | X              |              |             |
| Bryan Durkin     |                |              | X           |
| Richard Redding  |                |              | X           |
| Julie Winkler    |                |              | X           |
| Craig Donohue    |                |              | X           |
| Peter Barker     |                |              | X           |
| Nathan Laurell   |                |              | X           |
| Jeffrey Levoff   |                |              | X           |
| Lori Aldinger    | X              |              |             |
| John Labuszewski |                |              | X           |

TRG expects that some of the witnesses who will offer testimony relevant to liability and damages might not need to testify during the damages phase depending upon the extent of their testimony during the liability phase – *i.e.*, TRG might be able to elicit the relevant testimony during the liability phase but rely upon it in argument at the damages phase. TRG expects that, at a minimum, it would be required to present testimony from the following witnesses during both phases: Bryan Durkin, Richard Redding, Julie Winkler, and Craig Donohue.

TRG has not yet decided how it would approach proving the particular products that include the infringing technology should this Court trifurcate the proceeding.<sup>1</sup> TRG anticipates using one of its witnesses as a summary witness to categorize the various market maker

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<sup>1</sup> It is unclear to TRG whether this Court would have this issue decided in the liability phase or damages phase. To prove liability, TRG needs only to prove that the CME is using the patented system. It does not need to prove the full extent of the use. Although the full extent of use is technically a damages issue, TRG would likely seek to present evidence about the extent of the infringement during the liability phase to minimize its risk of an adverse jury finding based upon partial evidence.

agreements and provide the jury with easily understood testimony about the various categories. If liability and damages are tried together, TRG anticipates having Dr. Mangum offer this summary testimony. TRG has not decided how to proceed on this issue if liability and damages are tried separately.

Dated: April 25, 2011

Respectfully submitted,

/s/ Robert A. Klinck  
Daniel Kotchen  
Daniel L. Low  
Robert A. Klinck  
Alicia Gutierrez  
Kotchen & Low LLP  
2300 M Street NW, Ste. 800  
Washington, DC 20037  
(202) 416-1848  
(202) 280-1128 (fax)

Robert M. Mason  
Mason & Petruzzi  
13601 Preston Rd.  
Suite 402W  
Dallas, Texas 75240  
(972) 788-1500  
(972) 788-1561 (fax)

James D. Petruzzi  
Mason & Petruzzi  
4900 Woodway Rd., Ste. 745  
Houston, Texas 77056  
(713) 840-9993  
(713) 877-9100 (fax)

Daryl M. Schumacher  
Kopecky, Schumacher & Bleakley, P.C.  
203 N. LaSalle Street Ste. 1620  
Chicago, IL 60601  
(312) 380-6556  
(312) 324-0666 (fax)

*Attorneys for Technology Research Group,  
LLC*

**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that, on April 25, 2011, he caused true and correct copies of the foregoing document to be served upon all counsel of record via the Court's CM/ECF System.

/s/ Robert A. Klinck

*Attorney for Technology Research Group,  
LLC*